

PUBLIC COPY

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

126

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
BCIS, AAO 20 Mass, 3/F
Washington, D.C. 20536



File: EAC 01.084 50891 Office: VERMONT SERVICE CENTER

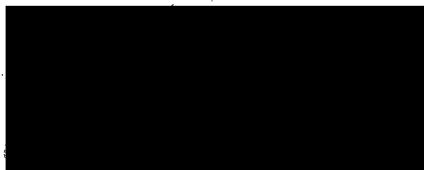
JUN 18 2003
Date:

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was dismissed by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted, the previous decisions of the director and the AAO will be affirmed and the petition will be denied.

The petitioner manufactures, sells, and services electrical electronic software. It seeks to employ the beneficiary permanently in the United States as a software development engineer. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the petitioner had not established that the beneficiary had met the petitioner's qualifications for the position as stated in the labor certification at the time of the filing date. The Associate Commissioner affirmed this determination on appeal.

On motion, counsel submits a brief.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

Section 203(b)(3)(A)(ii) of the Act provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

A labor certification is an integral part of this petition, but the issuance of a labor certification does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the training, education, and experience specified on the labor certification as of the petition's priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the petition's priority date is May 25, 2000.

The Application for Alien Employment Certification (Form ETA 750) indicated that the position of software development engineer required two years of experience in the job offered, or two years of experience in the related occupation of software development.

The Associate Commissioner determined that the petitioner had not shown that the beneficiary possessed the requisite experience in the job offered.

On motion, counsel reiterates his argument that since the beneficiary possesses two Master's degrees, there can be no doubt that she has at least the equivalent of five years of experience.

As stated by the AAO, however, "the letter from the petitioner merely states that the beneficiary had been performing the duties of the position for six months as of the priority date. As the record does not contain an employment history from the beneficiary's previous employer, it can not be determined if the beneficiary had two years of experience in the job offered as of the filing date of the petition."

Upon review, the petitioner has been unable to present sufficient evidence to overcome the findings of the director, or AAO, in their decisions to deny the petition. The petitioner has not established eligibility pursuant to section 203(b)(3) of the Act and the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The AAO's decision of May 14, 2002, is affirmed. The petition is denied.

RECEIVED
EAC 01 084 50891
MAY 14 2002